



Reports of Cases

Case C-463/14

Asparuhovo Lake Investment Company OOD

v

Direktor na Direktsia «Obzhalvane i danachno-osiguritelna praktika» Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Request for a preliminary ruling from the Administrativen sad — Varna)

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Articles 24(1), 25(b), 62(2), 63 and 64(1) — Meaning of ‘supply of services’ — Subscription contract for the supply of consulting services — Chargeable event — Need for proof of the actual supply of services — Chargeability of the tax)

Summary — Judgment of the Court (Third Chamber), 3 September 2015

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Jurisdiction of the national court — Establishing and assessing the facts of the dispute — Necessity of a question referred and relevance of the questions raised — Assessment by the national court*

(Art. 267 TFEU)

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Supply of services — Concept — Subscription contracts for the supply of consulting services — Supplier made available to the customer during the term of the contract — Included*

(Council Directive 2006/112, Art. 24(1))

3. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Chargeable event and chargeability of the tax — Subscription contracts for the supply of consulting services — Supplier made available to the customer during the term of the contract — Chargeable event and chargeability and the end of each period relating to the agreed payment*

(Council Directive 2006/112, Arts 62(2), 63 and 64(1))

1. See the text of the decision.

(see para. 29)

2. Article 24(1) of Directive 2006/112 on the common system of value added tax must be interpreted as meaning that the term ‘supply of services’ includes subscription contracts for the supply of consulting services to an undertaking, in particular those of a legal, commercial or financial nature, under which a supplier has agreed to be available to the customer during the term of the contract.

The basis of assessment for a supply of services is everything which makes up the consideration for the service and a supply of services is therefore taxable only if there is a direct link between the service supplied and the consideration received. Where the supply of services in question is characterised, *inter alia*, by the permanent availability of the service provider in order to supply, at the appropriate time, the services required by the customer, it is not necessary, in order to find that there is a direct link between that service and the consideration received, to establish that a payment relates to a personalised supply of services at a specific time carried out at the request of a customer. The fact that the services provided are neither defined in advance nor personalised and that the payment is made in the form of a lump sum is also not such as to affect the direct link between the supply of services made and the consideration received, the amount of which is determined in advance on the basis of well-established criteria.

(see paras 35, 38, 39, 43, operative part 1)

3. As regards subscription contracts for consulting services, under which a supplier has agreed to be available to the customer during the term of the contract, Articles 62(2), 63 and 64(1) of Directive 2006/112 on the common system of value added tax must be interpreted as meaning that the chargeable event and the chargeability of the tax occur upon the expiry of the period in respect of which the payment has been agreed, irrespective of whether and how often the customer has actually made use of the supplier's services.

A service which in essence entails being permanently available to the customer in order to provide it with consulting services and which is remunerated by means of fixed sums paid periodically must be regarded as being supplied in the period to which the payment relates, irrespective of whether the service provider has actually provided advice to its customer during that period. It is at the end of each period to which the payments relate that the supply must be regarded as having been completed for the purposes of Article 64(1) of Directive 2006/112.

(see paras 49-51, operative part 2)